



6712-01

FEDERAL COMMUNICATIONS COMMISSION

[AU Docket No. 11-146; DA 11-1845]

Auction of FM Broadcast Construction Permits Scheduled for March 27, 2012; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 93

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the auction of certain FM broadcast construction permits. This document establishes the procedures and other requirements for Auction 93.

DATES: Applications to participate in Auction 93 must be filed prior to 6 p.m. Eastern Time (ET) on January 12, 2012. Bidding for construction permits in Auction 93 is scheduled to begin on March 27, 2012.

FOR FURTHER INFORMATION CONTACT: Wireless Telecommunications Bureau, Auctions and Spectrum Access Division: For auction legal questions: Lynne Milne at (202) 418-0660; for general auction questions: Jeff Crooks at (202) 418-0660 or Linda Sanderson at (717) 338-2868. Media Bureau, Audio Division: for FM service rule questions: Lisa Scanlan or Tom Nessinger at (202) 418-2700.

SUPPLEMENTARY INFORMATION: This is a summary of the Auction 93 Procedures Public Notice released on November 8, 2011. The complete texts of the Auction 93 Procedures Public Notice, including its attachment, and related Commission documents, are available for public inspection and copying from 8:00 a.m. to 4:30 p.m. ET Monday through Thursday or from 8:00 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, 445 12th Street SW, Room CY-A257, Washington, DC 20554. The Auction 93 Procedures Public Notice and related Commission documents also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), 445 12th Street SW, Room CY-B402, Washington, DC 20554, telephone 202-488-5300, fax 202-488-5563, or you may contact BCPI at its website: <http://www.BCPIWEB.com>. When ordering documents from BCPI, please provide FCC document number DA 11-1845 for the Auction 93 Procedures Public Notice. The

Auction 93 Procedures Public Notice and related documents also are available on the Internet at the Commission's website: <http://wireless.fcc.gov/auctions/93/>, or by using the search function for AU Docket No. 11-146 on the Commission's Electronic Comment Filing System (ECFS) web page at <http://www.fcc.gov/cgb/ecfs/>.

I. GENERAL INFORMATION

A. Introduction

1. On September 12, 2011, the Wireless Telecommunications and Media Bureaus (collectively, the Bureaus) released the Auction 93 Comment Public Notice, 76 FR 60830, September 30, 2011, seeking comment on competitive bidding procedures to be used in Auction 93. One party submitted a comment in response to the Auction 93 Comment Public Notice.

i. Construction Permits in Auction 93

2. Auction 93 will offer 119 construction permits in the FM broadcast service as listed in Attachment A of the Auction 93 Procedures Public Notice. These construction permits are for new, vacant FM allotments, reflecting FM channels assigned to the FM Table of Allotments.

3. The Bureaus have removed four construction permits from the list of construction permits that were proposed for inclusion in this auction and listed in Attachment A of the Auction 93 Comment Public Notice. More information about the construction permits removed from this auction was provided in the Auction 93 Procedures Public Notice.

4. Applicants may apply for any vacant FM allotment listed in Attachment A of the Auction 93 Procedures Public Notice. When two or more short-form applications (FCC Form 175) specifying the same FM allotment are accepted for filing, mutual exclusivity exists for auction purposes, and thus, that construction permit must be awarded by competitive bidding procedures. Once mutual exclusivity exists for auction purposes, even if only one applicant for a particular construction permit submits an upfront payment, that applicant is required to submit a bid in order to obtain the permit.

B. Rules and Disclaimers

i. Relevant Authority

5. Prospective applicants must familiarize themselves thoroughly with the Commission's general competitive bidding rules, including recent amendments and clarifications, as well as Commission decisions in proceedings regarding competitive bidding procedures, application requirements, and obligations of Commission licensees. Broadcasters should also familiarize themselves with the Commission's rules relating to the FM broadcast service contained in 47 CFR 73.201 – 73.333 and 73.1001 – 73.5009. Prospective bidders must also be familiar with the rules relating to broadcast auctions and competitive bidding proceedings contained in 47 CFR 1.2101 – 1.2112 and 73.5000 – 73.5009. All bidders must also be thoroughly familiar with the procedures, terms and conditions contained in the Auction 93 Procedures Public Notice and the public notices and orders referenced in it.

6. The terms contained in the Commission's rules, relevant orders, and public notices are not negotiable. The Commission may amend or supplement the information contained in its public notices at any time, and will issue public notices to convey any new or supplemental information to applicants. It is the responsibility of all applicants to remain current with all Commission rules and with all public notices pertaining to this auction.

ii. Prohibited Communications and Compliance with Antitrust Laws

7. 47 CFR 1.2105(c) prohibits auction applicants for construction permits in any of the same geographic license areas from communicating with each other about bids, bidding strategies, or settlements unless such applicants have identified each other on their short-form applications (FCC Form 175) as parties with whom they have entered into agreements pursuant to 47 CFR 1.2105(a)(2)(viii).

a. Entities Subject to Section 1.2105(c)

8. The prohibition on certain communications in 47 CFR 1.2105(c) will apply to any applicants that submit short-form applications seeking to participate in a Commission auction for construction permits in the same geographic license area. Thus, unless they have identified each other on their short-form applications as parties with whom they have entered into agreements under 47 CFR

1.2105(a)(2)(viii), applicants for any of the same geographic license areas must affirmatively avoid all communications with or disclosures to each other that affect or have the potential to affect bids or bidding strategy. In some instances, this prohibition extends to communications regarding the post-auction market structure. **This prohibition applies to all applicants regardless of whether such applicants become qualified bidders or actually bid.** For the FM service, the geographic license area is the market designation, which is the particular vacant FM allotment. In Auction 93, this rule would apply to applicants designating any of the same FM allotments on the short-form application.

9. For purposes of this prohibition, 47 CFR 1.2105(c)(7)(i) defines applicant as including all officers and directors of the entity submitting a short-form application to participate in the auction, all controlling interests of that entity, as well as all holders of partnership and other ownership interests and any stock interest amounting to 10 percent or more of the entity, or outstanding stock, or outstanding voting stock of the entity submitting a short-form application. For example, where an individual served as an officer for two or more applicants, the Bureaus have found that the bids and bidding strategies of one applicant are conveyed to the other applicant, and, absent a disclosed bidding agreement, an apparent violation of 47 CFR 1.2105(c) occurs.

10. Individuals and entities subject to 47 CFR 1.2105(c) should take special care in circumstances where their employees may receive information directly or indirectly relating to any competing applicant's bids or bidding strategies.

11. 47 CFR 1.2105(c)(4) permits a non-controlling interest holder to obtain an interest in more than one competing applicant without violating 47 CFR 1.2105(c) provided specified conditions are met (including a certification that no prohibited communications have occurred or will occur), but that exception does not extend to a controlling interest holder.

12. Auction 93 applicants are encouraged not to use the same individual as an authorized bidder. A violation of 47 CFR 1.2105(c) could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between such applicants. Also, if the authorized bidders are different individuals employed by

the same organization (e.g., law firm or engineering firm or consulting firm), a violation similarly could occur. In such a case, at a minimum, applicants should certify on their applications that precautionary steps have been taken to prevent communication between authorized bidders, and that the applicant and their bidding agents will comply with 47 CFR 1.2105(c).

b. Prohibition Applies Until Down Payment Deadline

13. 47 CFR 1.2105(c)'s prohibition on certain communications begins at the short-form application filing deadline and ends at the down payment deadline after the auction closes, which will be announced in a future public notice.

c. Prohibited Communications

14. Applicants must not communicate directly or indirectly about bids or bidding strategy to other applicants in this auction. 47 CFR 1.2105(c) prohibits not only a communication about an applicant's own bids or bidding strategy, but also a communication of another applicant's bids or bidding strategy. While 47 CFR 1.2105(c) does not prohibit non-auction-related business negotiations among auction applicants, each applicant must remain vigilant so as not to directly or indirectly communicate information that affects, or could affect, bids or bidding strategy, or the negotiation of settlement agreements.

15. Applicants are cautioned that the Commission remains vigilant about prohibited communications taking place in other situations, including communications regarding capital calls or requests for additional funds in support of bids or bidding strategies. An applicant also may not use the Commission's bidding system to disclose its bidding strategy. Applicants also should use caution in their dealings with other parties, such as members of the press, financial analysts, or others who might become conduits for the communication of prohibited bidding information. Similarly, an applicant's public statement of intent not to participate in Auction 93 bidding could also violate the rule. Applicants are hereby placed on notice that public disclosure of information relating to bids, or bidding strategies, or to post auction market structures may violate 47 CFR 1.2105(c).

d. Disclosure of Bidding Agreements and Arrangements

16. The Commission's rules do not prohibit applicants from entering into otherwise lawful bidding agreements before filing their short-form applications, as long as they disclose the existence of the agreement(s) in their short-form applications. Applicants must identify in their short-form applications all parties with whom they have entered into any agreements, arrangements, or understandings of any kind relating to the construction permits being auctioned, including any agreements relating to post-auction market structure.

17. If parties agree in principle on all material terms prior to the short-form application filing deadline, each party to the agreement must identify the other party or parties to the agreement on its short-form application under 47 CFR 1.2105(c), even if the agreement has not been reduced to writing. If the parties have not agreed in principle by the short-form filing deadline, they should not include the names of parties to discussions on their applications, and they may not continue negotiation, discussion or communication with any other applicants after the short-form application filing deadline.

18. 47 CFR 1.2105(c) does not prohibit non-auction-related business negotiations among auction applicants. However, certain discussions or exchanges could touch upon impermissible subject matters because they may convey pricing information and bidding strategies. Such subject areas include, but are not limited to, issues such as management, sales, local marketing agreements, rebroadcast agreements, and other transactional agreements.

e. Section 1.2105(c) Certification

19. By electronically submitting a short-form application, each applicant in Auction 93 certifies its compliance with 47 CFR 1.2105(c) and 73.5002. In particular, an applicant must certify under penalty of perjury it has not entered and will not enter into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified in the application, regarding the amount of the applicant's bids, bidding strategies, or the particular construction permits on which it will or will not bid. However, the Bureaus caution that merely filing a certifying statement as part of an application will not outweigh specific evidence that a prohibited communication

has occurred, nor will it preclude the initiation of an investigation when warranted. Any applicant found to have violated 47 CFR 1.2105(c) may be subject to sanctions.

f. Duty to Report Prohibited Communications

20. 47 CFR 1.2105(c)(6) provides that any applicant that makes or receives a communication that appears to violate 47 CFR 1.2105(c) must report such communication in writing to the Commission immediately, and in no case later than five business days after the communication occurs. The Commission has clarified that each applicant's obligation to report any such communication continues beyond the five-day period after the communication is made, even if the report is not made within the five-day period.

21. In addition, 47 CFR 1.65 requires an applicant to report to the Commission any communication the applicant has made to or received from another applicant after the short-form application filing deadline that affects or has the potential to affect bids or bidding strategy, unless such communication is made to or received from a party to an agreement identified under 47 CFR 1.2105(a)(2)(viii).

22. 47 CFR 1.65(a) and 1.2105(c) require each applicant in competitive bidding proceedings to furnish additional or corrected information within five days of a significant occurrence, or to amend its short-form application no more than five days after the applicant become aware of the need for amendment.

g. Procedure for Reporting Prohibited Communications

23. A party reporting any communication pursuant to 47 CFR 1.65, 1.2105(a)(2), or 1.2105(c)(6) must take care to ensure that any report of a prohibited communication does not itself give rise to a violation of 47 CFR 1.2105(c). For example, a party's report of a prohibited communication could violate the rule by communicating prohibited information to other applicants through the use of Commission filing procedures that would allow such materials to be made available for public inspection. This reporting process differs from filing procedures used in connection with other Commission rules and processes which may call for submission of filings to the Commission's Office of the Secretary or the

Electronic Comment Filing System (ECFS). Filings through the Office of the Secretary or ECFS could allow the report to become publicly available and might result in the communication of prohibited information to other auction applicants.

24. 47 CFR 1.2105(c) requires reports to be filed consistent with the instructions set forth in the Auction 93 Procedures Public Notice. For Auction 93, a party must file a report concerning such a prohibited communication with the Chief of the Auctions and Spectrum Access Division, Wireless Telecommunications Bureau. Any such report should be submitted by e-mail to Ms. Margaret W. Wiener at the following e-mail address: auction93@fcc.gov. If a party chooses instead to submit a report by hard copy, such report must be delivered only to: Margaret W. Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street SW, Room 6423, Washington, DC 20554.

25. A party seeking to report such a prohibited communication should consider submitting its report with a request that the report or portions of the submission be withheld from public inspection by following the procedures specified in 47 CFR 0.459. Such parties also are encouraged to coordinate with the Auctions and Spectrum Access Division staff about the procedures for submitting such reports.

h. Winning Bidders Must Disclose Terms of Agreements

26. Each applicant that is a winning bidder will be required to disclose in its long-form applications the specific terms, conditions, and parties involved in any agreement it has entered into. This requirement applies to any bidding consortia, joint venture, partnership, or agreement, understanding, or other arrangement entered into relating to the competitive bidding process, including any agreement relating to the post-auction market structure. Failure to comply with the Commission's rules can result in enforcement action.

i. Additional Information Concerning Rule Prohibiting Certain Communications

27. A summary listing of documents issued by the Commission and the Bureaus addressing the application of 47 CFR 1.2105(c) may be found in Attachment D of the Auction 93 Procedures Public Notice. These documents are available on the Commission's auction web page.

j. Antitrust Laws

28. Regardless of compliance with the Commission's rules, applicants remain subject to the antitrust laws, which are designed to prevent anticompetitive behavior in the marketplace. Compliance with the disclosure requirements of 47 CFR 1.2105(c) will not insulate a party from enforcement of the antitrust laws.

29. To the extent the Commission becomes aware of specific allegations that suggest that violations of the federal antitrust laws may have occurred, the Commission may refer such allegations to the United States Department of Justice for investigation. If an applicant is found to have violated the antitrust laws or the Commission's rules in connection with its participation in the competitive bidding process, it may be subject to forfeiture of its upfront payment, down payment, or full bid amount and may be prohibited from participating in future auctions, among other sanctions.

iii. Due Diligence

30. Each potential bidder is solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the value of the construction permits for broadcast facilities it is seeking in this auction. Each bidder is responsible for assuring that, if it wins a construction permit, it will be able to build and operate facilities in accordance with the Commission's rules. **The FCC makes no representations or warranties about the use of this spectrum for particular services.** Applicants should be aware that an FCC auction represents an opportunity to become an FCC permittee in a broadcast service, subject to certain conditions and regulations. **An FCC auction does not constitute an endorsement by the FCC of any particular service, technology, or product, nor does an FCC construction permit or license constitute a guarantee of business success.**

31. An applicant should perform its due diligence research and analysis before proceeding, as it would with any new business venture. Each potential bidder should review all underlying Commission orders, such as the specific order amending the FM Table of Allotments and allotting the FM channel(s) on which it plans to bid. An order adopted in an FM allotment rulemaking proceeding may include anomalies such as site restrictions or expense reimbursement requirements. Each potential bidder should perform technical analyses or refresh its previous analyses to assure itself that, should it be a winning bidder for any Auction 91 construction permit, it will be able to build and operate facilities that will fully comply with the Commission's technical and legal requirements. Each applicant should inspect any prospective transmitter sites located in, or near, the service area for which it plans to bid, confirm the availability of such sites, and familiarize itself with the Commission's rules regarding the National Environmental Policy Act at 47 CFR Chapter 1, Part 1, Subpart I.

32. Each applicant should conduct its own research prior to Auction 93 in order to determine the existence of pending administrative or judicial proceedings that might affect its decision to participate in the auction, including pending allocation rulemaking proceedings. Each participant in Auction 93 should continue such research throughout the auction. The due diligence considerations mentioned in the Auction 93 Procedures Public Notice do not comprise an exhaustive list of steps that should be undertaken prior to participating in this auction. As always, the burden is on the potential bidder to determine how much research to undertake, depending upon specific facts and circumstances related to its interests.

33. Pending and future judicial proceedings, as well as certain pending and future Commission proceedings – including applications, applications for modification, petitions for rulemaking, requests for special temporary authority, waiver requests, petitions to deny, petitions for reconsideration, informal objections, and applications for review – may relate to particular applicants, incumbent permittees, incumbent licensees, or the construction permits available in Auction 93. Each prospective applicant is responsible for assessing the likelihood of the various possible outcomes and for considering the potential impact on construction permits available in this auction.

34. **Applicants are solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect their ability to bid on, otherwise acquire, or make use of the construction permits available in Auction 93.** Each potential bidder is responsible for undertaking research to ensure that any permits won in this auction will be suitable for its business plans and needs. Each potential bidder must undertake its own assessment of the relevance and importance of information gathered as part of its due diligence efforts.

35. Applicants may research the Media Bureau's licensing database in order to determine which channels are already licensed to incumbent licensees or previously authorized to construction permittees. Licensing records are contained in the Media Bureau's Consolidated Data Base System (CDBS) and may be researched on the Internet at <http://www.fcc.gov/mb>.

36. The Commission makes no representations or guarantees regarding the accuracy or completeness of information in its databases or any third party databases, including court docketing systems, for example. To the extent the Commission's databases may not include all information deemed necessary or desirable by an applicant, it must obtain or verify such information from independent sources or assume the risk of any incompleteness or inaccuracy in said databases. The Commission makes no representations or guarantees regarding the accuracy or completeness of information that has been provided by incumbent licensees and incorporated into its databases.

iv. Use of Integrated Spectrum Auction System

37. Bidders will be able to participate in Auction 93 over the Internet using the Commission's web-based Integrated Spectrum Auction System (ISAS or FCC Auction System). The Commission makes no warranty whatsoever with respect to the FCC Auction System. In no event shall the Commission, or any of its officers, employees, or agents, be liable for any damages whatsoever (including, but not limited to, loss of business profits, business interruption, loss of business information, or any other loss) arising out of or relating to the existence, furnishing, functioning, or use of the FCC Auction System that is accessible to qualified bidders in connection with this auction. Moreover, no

obligation or liability will arise out of the Commission's technical, programming, or other advice or service provided in connection with the FCC Auction System.

v. Environmental Review Requirements

38. Permittees or licensees must comply with the Commission's rules regarding implementation of the National Environmental Policy Act and other federal environmental statutes. The construction of a broadcast facility is a federal action and the permittee or licensee must comply with the Commission's environmental rules, 47 CFR 1.1301-1.1319, for each such facility. These environmental rules require, among other things, that the permittee or licensee consult with expert agencies having environmental responsibilities, including the U.S. Fish and Wildlife Service, the State Historic Preservation Office, the U.S. Army Corps of Engineers, and the Federal Emergency Management Agency (through the local authority with jurisdiction over floodplains). In assessing the effect of facility construction on historic properties, the permittee or licensee must follow the provisions of the FCC's Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process. The permittee or licensee must prepare environmental assessments for any facility that may have a significant impact in or on wilderness areas, wildlife preserves, threatened or endangered species, or designated critical habitats, historical or archaeological sites, Indian religious sites, floodplains, and surface features. In addition, the permittee or licensee must prepare environmental assessments for facilities that include high intensity white lights in residential neighborhoods or excessive radio frequency emission.

C. Auction Specifics

i. Bidding Methodology

39. The bidding methodology for Auction 93 will be a simultaneous multiple round format. The Commission will conduct this auction over the Internet using the FCC Auction System. Qualified bidders are permitted to bid electronically via the Internet or by telephone using the telephonic bidding option. All telephone calls are recorded.

ii. Pre-Auction Dates and Deadlines

40. The following dates and deadlines apply:

Auction Tutorial Available (via Internet)January 3, 2012

Short-Form Application (FCC Form 175)

Filing Window OpensJanuary 3, 2012; 12:00 noon ET

Short-Form Application (FCC Form 175)

Filing Window DeadlineJanuary 12, 2012; prior to 6:00 p.m. ET

Upfront Payments (via wire transfer).....February 22, 2012; 6:00 p.m. ET

Mock AuctionMarch 23, 2012

Auction Begins.....March 27, 2012

iii. Requirements for Participation

41. Those wishing to participate in this auction must: (1) Submit a short-form application (FCC Form 175) electronically prior to 6:00 p.m. ET, on January 12, 2012, following the electronic filing procedures set forth in Attachment B of the Auction 93 Procedures Public Notice; (2) Submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by 6:00 p.m. ET, on February 22, 2012, following the procedures and instructions set forth in Attachment C to the Auction 93 Procedures Public Notice; and (3) Comply with all provisions outlined in the Auction 93 Procedures Public Notice and applicable Commission rules.

II. SHORT-FORM APPLICATION (FCC FORM 175) REQUIREMENTS

A. General Information Regarding Short-Form Applications

42. An application to participate in an FCC auction, referred to as a short-form application or FCC Form 175, provides information used to determine whether the applicant is legally, technically, and financially qualified to participate in Commission auctions for licenses or permits. The short-form application is the first part of the Commission's two-phased auction application process. In the first phase, parties desiring to participate in the auction must file a streamlined, short-form application in which they certify under penalty of perjury as to their qualifications. Each applicant must take seriously

its duties and responsibilities and carefully determine before filing an application that it has the legal, technical and financial resources to participate in the auction, as well as to construct and operate an FM station if it becomes a licensee as a result of its participation in this auction. Eligibility to participate in bidding is based on the applicant's short-form application and certifications, as well as its upfront payment. In the second phase of the process, a winning bidder must file a more comprehensive long-form application.

43. Every entity and individual seeking a construction permit available in Auction 93 must file a short-form application electronically via the FCC Auction System prior to 6:00 p.m. ET on January 12, 2012, following the procedures prescribed in Attachment B of the Auction 93 Procedures Public Notice. If an applicant claims eligibility for a bidding credit, the information provided in its FCC Form 175 will be used to determine whether the applicant is eligible for the claimed bidding credit. Applicants filing a short-form application are subject to the Commission's anti-collusion rules beginning at the deadline for filing.

44. Applicants bear full responsibility for submitting accurate, complete and timely short-form applications. All applicants must certify on their short-form applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license. Applicants should read carefully the instructions set forth in Attachment B of the Auction 93 Procedures Public Notice and should consult the Commission's rules to ensure that all the information required is included within their short-form application.

45. An individual or entity may not submit more than one short-form application for a single auction. If a party submits multiple short-form applications, only one application may be accepted for filing.

46. Applicants also should note that submission of a short-form application (and any amendments thereto) constitutes a representation by the certifying official that he or she is an authorized representative of the applicant, that he or she has read the form's instructions and certifications, and that the contents of the application, its certifications, and any attachments are true and correct. Applicants are

not permitted to make major modifications to their applications; such impermissible changes include a change of the certifying official to the application. Submission of a false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution.

B. Permit Selection

47. An applicant must select the construction permits on which it wants to bid from the Eligible Permits list on its short-form application. To assist in identifying construction permits of interest that will be available in Auction 93, the FCC Auction System includes a filtering mechanism that allows an applicant to filter the Eligible Permits list. Selections for one or more of the filter criteria can be made and the system will produce a list of construction permits satisfying the specified criteria. Any or all of the construction permits in the filtered results may be selected. Applicants will also be able to select construction permits from one set of filtered results and then filter on different criteria to select additional construction permits.

48. Applicants interested in participating in Auction 93 must have selected construction permit(s) available in this auction by the short-form application filing deadline. Applicants must review and verify their construction permit selections before the deadline for submitting short-form applications. Construction permit selections cannot be changed after the short-form application filing deadline. The FCC Auction System will not accept bids on construction permits that were not selected on the applicant's short-form application.

49. A commenter contends that the Commission's rules should be revised to require that an applicant submit a separate fee for each construction permit selected on its short-form application, to discourage applicants from selecting multiple or even all permits in one broadcast auction. The change advocated by the commenter would require an amendment of the Commission's rules and is thus outside of the scope of this proceeding, which is confined to establishing procedures for the conduct of this auction of FM construction permits.

C. New Entrant Bidding Credit

50. The interests of the applicant and of any individuals or entities with an attributable interest in the applicant, in other media of mass communications are considered when determining an applicant's eligibility for the New Entrant Bidding Credit. In Auction 93, the bidder's attributable interests, and thus, the applicant's maximum new entrant bidding credit eligibility, are determined as of the short-form application filing deadline. An applicant intending to divest a media interest or make any other ownership changes, such as resignation of positional interests, in order to avoid attribution for purposes of qualifying for the New Entrant Bidding Credit must have consummated such divestment transactions or have completed such ownership changes by no later than the short-form filing deadline. Each applicant has a duty to continuously maintain the accuracy of information submitted in its auction application, including accurate bidding credit information. Events occurring after the short-form filing deadline, such as the acquisition of attributable interests in media of mass communications, may cause diminishment or loss of the bidding credit, and must be reported immediately, and no less than five days after the event occurs.

51. Under traditional broadcast attribution rules, including 47 CFR 73.3555 Note 2, those entities or individuals with an attributable interest in a bidder include: (1) All officers and directors of a corporate bidder; (2) Any owner of 5 percent or more of the voting stock of a corporate bidder; (3) All partners and limited partners of a partnership bidder, unless the limited partners are sufficiently insulated; and (4) All members of a limited liability company, unless sufficiently insulated.

52. In cases where an applicant's spouse or close family member holds other media interests, such interests are not automatically attributable to the bidder. The Commission decides attribution issues in this context based on certain factors traditionally considered relevant. Applicants should note that the mass media attribution rules were revised in 1999.

53. In 1999, the Commission further refined the eligibility standards for the New Entrant Bidding Credit, judging it appropriate to attribute the media interests held by very substantial investors in, or creditors of, an applicant claiming new entrant status. Specifically, the attributable mass media

interests held by an individual or entity with an equity and/or debt interest in an applicant shall be attributed to that applicant for purposes of determining its eligibility for the New Entrant Bidding Credit, if the equity and debt interests, in the aggregate, exceed 33 percent of the total asset value of the applicant, even if such an interest is non-voting.

54. In the Diversity Order, 73 FR 28400, May 16, 2008, the Commission relaxed the equity/debt plus (EDP) attribution standard, to allow for higher investment opportunities in entities meeting the definition of eligible entities in 47 CFR 73.3555 Note 2(i). Consistent with a court decision issued in July 2011, the relaxed EDP rule for eligible entities as the basis for the New Entrant Bidding Credit will be unavailable in Auction 93.

55. A medium of mass communications is defined in 47 CFR 73.5008(b). **Full service noncommercial educational stations, on both reserved and non-reserved channels, are included among media of mass communications as defined in 47 CFR 73.5008(b).** Generally, media interests will be attributable for purposes of the New Entrant Bidding Credit to the same extent that such other media interests are considered attributable for purposes of the broadcast multiple ownership rules. However, attributable interests held by a winning bidder in existing low power television, television translator or FM translator facilities will not be counted among the applicant's other mass media interests in determining its eligibility for a New Entrant Bidding Credit.

D. Application Requirements

56. In addition to the ownership information required pursuant to 47 CFR 1.2105 and 1.2112, applicants seeking a New Entrant Bidding Credit are required to establish on their short-form applications that they satisfy the eligibility requirements to qualify for the bidding credit. In those cases, a certification under penalty of perjury must be provided in completing the short-form application. An applicant claiming that it qualifies for a 35 percent New Entrant Bidding Credit must certify that neither it nor any of its attributable interest holders have any attributable interests in any other media of mass communications. An applicant claiming that it qualifies for a 25 percent New Entrant Bidding Credit must certify that neither it nor any of its attributable interest holders has any attributable interests in more

than three media of mass communications, and must identify and describe such media of mass communications.

i. Bidding Credits

57. Applicants that qualify for the New Entrant Bidding Credit, as specified in 47 CFR 73.5007, are eligible for a bidding credit that represents the amount by which a bidder's winning bid is discounted. The size of a New Entrant Bidding Credit depends on the number of ownership interests in other media of mass communications that are attributable to the bidder-entity and its attributable interest-holders. A 35 percent bidding credit will be given to a winning bidder if it, and/or any individual or entity with an attributable interest in the winning bidder, has no attributable interest in any other media of mass communications, as defined in 47 CFR 73.5008. A 25 percent bidding credit will be given to a winning bidder if it, and/or any individual or entity with an attributable interest in the winning bidder, has an attributable interest in no more than three mass media facilities, as defined in 47 CFR 73.5008. No bidding credit will be given if any of the commonly owned mass media facilities serve the same area as the broadcast permit proposed in the auction, as defined in 47 CFR 73.5007(b), or if the winning bidder, and/or any individual or entity with an attributable interest in the winning bidder, has attributable interests in more than three mass media facilities. For purposes of determining whether a broadcast permit offered in this auction is in the same area as an applicant's existing mass media facilities, the coverage area of the to-be-auctioned facility is calculated using maximum class facilities at the allotment reference coordinates, **not** any applicant-specified preferred site coordinates.

58. Bidding credits are not cumulative. Qualifying applicants receive either the 25 percent or the 35 percent bidding credit, but not both. Attributable interests are defined in 47 CFR 73.3555 and note 2 of that section. Applicants should note that unjust enrichment provisions apply to a winning bidder that utilizes a bidding credit and subsequently seeks to assign or transfer control of its license or construction permit to an entity not qualifying for the same level of bidding credit.

E. Ownership Disclosure Requirements

59. For purposes of determining eligibility to participate in a broadcast auction, all applicants must comply with the uniform Part 1 ownership disclosure standards and provide information required by 47 CFR 1.2105 and 1.2112. Specifically, in completing the short-form application, applicants will be required to fully disclose information on the real party- or parties-in-interest and ownership structure of the applicant, **including both direct and indirect ownership interests of 10 percent or more**. The ownership disclosure standards for the short-form application are prescribed in 47 CFR 1.2105 and 1.2112. Each applicant is responsible for ensuring that information submitted in its short-form application is complete and accurate.

60. In certain circumstances, an applicant's most current ownership information on file with the Commission, if in an electronic format compatible with the short-form application (FCC Form 175) (such as information submitted in an on-line FCC Form 602 or in an FCC Form 175 filed for a previous auction using the FCC Auction System) will automatically be entered into their short-form application. Each applicant must carefully review any information automatically entered to confirm that it is complete and accurate as of the deadline for filing the short-form application. Any information that needs to be corrected or updated must be changed directly in the short-form application.

F. Provisions Regarding Former and Current Defaulters

61. Current defaulters or delinquents are not eligible to participate in Auction 93, but former defaulters or delinquents can participate so long as they are otherwise qualified and, make upfront payments that are fifty percent more than would otherwise be necessary. An applicant is considered a current defaulter or a current delinquent when it, any of its affiliates, any of its controlling interests, or any of the affiliates of its controlling interests, is in default on any payment for any Commission construction permit or license (including a down payment) or is delinquent on any non-tax debt owed to any Federal agency as of the filing deadline for short-form applications. An applicant is considered a former defaulter or a former delinquent when it, any of its affiliates, any of its controlling interests, or any of the affiliates of its controlling interests, have defaulted on any Commission construction permit or

license or been delinquent on any non-tax debt owed to any Federal agency, but have since remedied all such defaults and cured all of the outstanding non-tax delinquencies.

62. On the short-form application, an applicant must certify under penalty of perjury that it, its affiliates, its controlling interests, and the affiliates of its controlling interests, as defined by 47 CFR 1.2110, are not in default on any payment for a Commission construction permit or license (including down payments) and that it is not delinquent on any non-tax debt owed to any Federal agency. Each applicant must also state under penalty of perjury whether it, its affiliates, its controlling interests, and the affiliates of its controlling interests, have ever been in default on any Commission construction permit or license or have ever been delinquent on any non-tax debt owed to any Federal agency. Submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

63. Applicants are encouraged to review the Bureaus' previous guidance on default and delinquency disclosure requirements in the context of the short-form application process. For example, it has been determined that, to the extent that Commission rules permit late payment of regulatory or application fees accompanied by late fees, such debts will become delinquent for purposes of 47 CFR 1.2105(a) and 1.2106(a) only after the expiration of a final payment deadline. Therefore, with respect to regulatory or application fees, the provisions of 47 CFR 1.2105(a) and 1.2106(a) regarding default and delinquency in connection with competitive bidding are limited to circumstances in which the relevant party has not complied with a final Commission payment deadline. Parties are also encouraged to consult with the Wireless Telecommunications Bureau's Auctions and Spectrum Access Division staff if they have any questions about default and delinquency disclosure requirements.

64. The Commission considers outstanding debts owed to the United States Government, in any amount, to be a serious matter. The Commission adopted rules, including a provision referred to as the red light rule, that implement its obligations under the Debt Collection Improvement Act of 1996, which governs the collection of debts owed to the United States. Under the red light rule, applications

and other requests for benefits filed by parties that have outstanding debts owed to the Commission will not be processed. In the same rulemaking order, the Commission explicitly declared, however, that its competitive bidding rules are not affected by the red light rule. As a consequence, the Commission's adoption of the red light rule does not alter the applicability of any of its competitive bidding rules, including the provisions and certifications of 47 CFR 1.2105 and 1.2106, with regard to current and former defaults or delinquencies.

65. Applicants are reminded that the Commission's Red Light Display System, which provides information regarding debts currently owed to the Commission, may not be determinative of an auction applicant's ability to comply with the default and delinquency disclosure requirements of 47 CFR 1.2105. Thus, while the red light rule ultimately may prevent the processing of long-form applications by auction winners, an auction applicant's lack of current red light status is not necessarily determinative of its eligibility to participate in an auction or of its upfront payment obligation.

66. Moreover, prospective applicants in Auction 93 should note that any long-form applications filed after the close of bidding will be reviewed for compliance with the Commission's red light rule, and such review may result in the dismissal of a winning bidder's long-form application. Applicants that have their long-form applications dismissed will be deemed to have defaulted and will be subject to default payments under 47 CFR 1.2104(g) and 1.2109(c).

G. Optional Applicant Status Identification

67. Applicants owned by members of minority groups and/or women, as defined in 47 CFR 1.2110(c)(3), and rural telephone companies, as defined in 47 CFR 1.2110(c)(4), may identify themselves regarding this status in filling out their short-form applications. This applicant status information is collected for statistical purposes only and assists the Commission in monitoring the participation of designated entities in its auctions.

H. Noncommercial Educational Status Election

68. Applications for noncommercial educational (NCE) FM stations on nonreserved spectrum, filed during an FM filing window, will be returned as unacceptable for filing if mutually

exclusive with any application for a commercial station. Short-form applications specifying the same FM station construction permit are considered to be mutually exclusive. Accordingly, if an FCC Form 175 filed during the Auction 93 filing window identifying the application's proposed station as noncommercial educational is mutually exclusive with any application filed during that window for a commercial station, the NCE application will be returned as unacceptable for filing. For this reason, each prospective applicant in this auction should consider carefully if it wishes to propose NCE operation for any FM station acquired in this auction. This NCE election cannot be reversed after the initial application filing deadline. In contrast, a short-form application that does not identify the facilities proposed in the FCC Form 175 as NCE will be considered, as a matter of law, an application for a commercial broadcast station or stations.

I. Minor Modifications to Short-Form Applications

69. After the deadline for filing initial applications, an Auction 93 applicant is permitted to make only minor changes to its application. Permissible minor changes include, among other things, deletion and addition of authorized bidders (to a maximum of three) and revision of addresses and telephone numbers of the applicants and their contact persons. An applicant is not permitted to make a major modification to its application (e.g., change of construction permit selection, change control of the applicant, change the certifying official, claim eligibility for a higher percentage of bidding credit, or change the identification of the application's proposed facilities as noncommercial educational) after the initial application filing deadline. Thus, any change in control of an applicant, resulting from a merger for example, will be considered a major modification and the application will consequently be dismissed. If an applicant's short-form application is dismissed, the applicant would remain subject to the communication prohibitions of 47 CFR 1.2105(c) until the down payment deadline.

70. If an applicant wishes to make permissible minor changes to its short-form application, such changes should be made electronically to its short-form application using the FCC Auction System whenever possible. For the change to be submitted and considered by the Commission, be sure to click on the SUBMIT button.

71. An applicant cannot use the FCC Auction System outside of the initial and resubmission filing windows to make changes to its short-form application for other than administrative changes (e.g. changing certain contact information or the name of an authorized bidder). If these or other permissible minor changes need to be made outside of these windows, the applicant must submit a letter briefly summarizing the changes and subsequently update its short-form application in the FCC Auction System once it is available. Moreover, after the filing window has closed, the system will not permit applicants to make certain changes, such as the applicant's legal classification and the identification of the application's proposed facilities as noncommercial educational. Any letter describing changes to an applicant's short-form application must be submitted by e-mail to auction93@fcc.gov.

72. Any application amendment and related statements of fact must be certified by (1) the applicant, if the applicant is an individual; (2) one of the partners if the applicant is a partnership; (3) an officer, director, or duly authorized employee, if the applicant is a corporation; (4) a member who is an officer, if the applicant is an unincorporated association; (5) the trustee, if the applicant is an amateur radio service club; or (6) a duly elected or appointed official who is authorized to make such certifications under the laws of the applicable jurisdiction, if the applicant is a governmental entity.

73. Applicants must not submit application-specific material through the Commission's Electronic Comment Filing System.

J. Maintaining Current Information in Short-Form Applications

74. 47 CFR 1.65 and 1.2105(b) requires an applicant to continually maintain the accuracy and completeness of information furnished in its pending application and in competitive bidding proceedings to furnish additional or corrected information to the Commission within five days of a significant occurrence, or to amend a short form application no more than five days after the applicant becomes aware of the need for the amendment. Changes that cause a loss of or reduction in the percentage of bidding credit specified on the originally-submitted application must be reported immediately, and no later than five business days after the change occurs. If an amendment reporting changes is a major amendment, as defined by 47 CFR 1.2105, the major amendment will not be accepted

and may result in the dismissal of the application. After the short-form filing deadline, applicants may make only minor changes to their applications. For changes to be submitted and considered by the Commission, be sure to click on the SUBMIT button in the FCC Auction System. In addition, an applicant cannot update its short-form application using the FCC Auction System after the initial and resubmission filing windows close. If information needs to be submitted pursuant to 47 CFR 1.65 after these windows close, a letter briefly summarizing the changes must be submitted by e-mail to auction93@fcc.gov. This e-mail must include a subject or caption referring to Auction 93 and the name of the applicant.

III. PRE-AUCTION PROCEDURES

A. Online Auction Tutorial – Available January 3, 2012

75. On Tuesday, January 3, 2012, an educational auction tutorial will be available on the Auction 93 web page for prospective bidders to familiarize themselves with the auction process. This online tutorial will provide information about pre-auction procedures, completing short-form applications, auction conduct, the FCC Auction Bidding System, auction rules, and broadcast services rules. The tutorial will also provide an avenue to ask FCC staff questions about the auction, auction procedures, filing requirements, and other matters related to this auction.

B. Short-Form Applications – Due Prior to 6:00 p.m. ET on January 12, 2012

76. In order to be eligible to bid in this auction, applicants must first follow the procedures set forth in Attachment B of the [Auction 93 Procedures Public Notice](#) to submit a short-form application (FCC Form 175) electronically via the FCC Auction System. This short-form application must be submitted prior to 6:00 p.m. ET on January 12, 2012. **Late applications will not be accepted.** No application fee is required, but an applicant must submit a timely upfront payment to be eligible to bid.

77. Applications may generally be filed at any time beginning at noon ET on January 3, 2012, until the filing window closes at 6:00 p.m. ET on January 12, 2012. Applicants are strongly encouraged to file early and are responsible for allowing adequate time for filing their applications. Applications can be updated or amended multiple times until the filing deadline on January 12, 2012.

78. An applicant must always click on the SUBMIT button on the Certify & Submit screen to successfully submit its FCC Form 175 and any modifications; otherwise the application or changes to the application will not be received or reviewed by Commission staff. Additional information about accessing, completing, and viewing the FCC Form 175 is included in Attachment B of the Auction 93 Procedures Public Notice. FCC Auctions Technical Support is available at (877) 480-3201, option nine; (202) 414-1250 or (202) 414-1255(TTY); hours of service are Monday through Friday, from 8:00 a.m. to 6:00 p.m. ET.

C. Application Processing and Minor Corrections

79. After the deadline for filing FCC Form 175 applications, the Commission will process all timely submitted applications to determine which are complete, and subsequently will issue a public notice identifying (1) those that are complete; (2) those that are rejected; and (3) those that are incomplete or deficient because of minor defects that may be corrected. That public notice will include the deadline for resubmitting corrected applications.

80. Non-mutually exclusive applications will be listed in a subsequent public notice to be released by the Bureaus. Such applications will not proceed to auction, but will proceed in accordance with instructions set forth in that public notice. All mutually exclusive applications will be considered under the relevant procedures for conflict resolution. Mutually exclusive applications proposing commercial stations will proceed to auction.

81. After the application filing deadline on January 12, 2012, applicants can make only minor corrections to their applications. They will not be permitted to make major modifications (e.g., change construction permit selection, change control of the applicant, change the certifying official, claim eligibility for a higher percentage of bidding credit, or change identification of the application's proposed facilities as NCE).

82. Commission staff will communicate only with an applicant's contact person or certifying official, as designated on the short-form application, unless the applicant's certifying official or contact person notifies the Commission in writing that applicant's counsel or other representative is authorized to

speak on the applicant's behalf. Authorizations may be sent by e-mail to auction93@fcc.gov. The FCC will not send auction registration material to anyone other than the contact person listed on the applicant's FCC Form 175 or respond to a request for replacement registration material from anyone other than an authorized bidder, the contact person, or the certifying official listed on the applicant's FCC Form 175.

D. Upfront Payments – Due February 22, 2012

83. In order to be eligible to bid in this auction, an upfront payment must be submitted and accompanied by an FCC Remittance Advice Form (FCC Form 159). After completing its short-form application, an applicant will have access to an electronic version of the FCC Form 159 that can be printed and sent by fax to U.S. Bank in St. Louis, Missouri. **All upfront payments must be made as instructed in the Auction 93 Procedures Public Notice and must be received in the proper account at U.S. Bank before 6:00 p.m. ET on February 22, 2012.**

i. Making Upfront Payments by Wire Transfer

84. Wire transfer payments must be received before 6:00 p.m. ET on February 22, 2012. No other payment method is acceptable. To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their bankers several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline.

85. At least one hour before placing the order for the wire transfer (but on the same business day), **applicants must fax a completed FCC Form 159 (Revised 2/03) to U.S. Bank at (314) 418-4232.** On the fax cover sheet, write Wire Transfer – Auction Payment for Auction 93. In order to meet the upfront payment deadline, an applicant's payment must be credited to the Commission's account for Auction 93 before the deadline.

86. Each applicant is responsible for ensuring timely submission of its upfront payment and for timely filing of an accurate and complete FCC Remittance Advice Form (FCC Form 159). An applicant should coordinate with its financial institution well ahead of the due date regarding its wire transfer and allow sufficient time for the transfer to be initiated and completed prior to the deadline. The

Commission repeatedly has cautioned auction participants about the importance of planning ahead to prepare for unforeseen last-minute difficulties in making payments by wire transfer. **Each applicant also is responsible for obtaining confirmation from its financial institution that its wire transfer to U.S. Bank was successful and from Commission staff that its upfront payment was timely received and that it was deposited into the proper account.**

87. All upfront payments must be made in U.S. dollars. All upfront payments must be made by wire transfer. Upfront payments for Auction 93 go to a lockbox number different from the lockboxes used in previous FCC auctions. Failure to deliver a sufficient upfront payment as instructed in the Auction 93 Procedures Public Notice by the deadline on February 22, 2012, will result in dismissal of the short-form application and disqualification from participation in the auction. Any applicant that submits a short-form application but fails to timely submit a sufficient upfront payment will retain its status as an applicant in this auction and will remain subject to 47 CFR 1.2105(c) and 73.7002(d), but, having purchased no bidding eligibility, will not be eligible to bid.

ii. FCC Form 159

88. An accurate and complete FCC Remittance Advice Form (FCC Form 159, Revised 2/03) must be faxed to U.S. Bank to accompany each upfront payment. Proper completion of this form is critical to ensuring correct crediting of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment C of the Auction 93 Procedures Public Notice. An electronic pre-filled version of the FCC Form 159 is available after submitting the FCC Form 175. Payers using the pre-filled FCC Form 159 are responsible for ensuring that all of the information on the form, including payment amounts, is accurate. The FCC Form 159 can be completed electronically, but must be filed with U.S. Bank by fax.

iii. Upfront Payments and Bidding Eligibility

89. Applicants must make upfront payments sufficient to obtain bidding eligibility on the construction permits on which they will bid. The amount of the upfront payment determines a bidder's initial bidding eligibility, the maximum number of bidding units on which a bidder may place bids. In

order to bid on a particular construction permit, a qualified bidder must have selected the construction permit on its FCC Form 175 and must have a current eligibility level that meets or exceeds the number of bidding units assigned to that construction permit. **At a minimum, therefore, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one of the construction permits selected on its FCC Form 175, or else the applicant will not be eligible to participate in the auction.** An applicant does not have to make an upfront payment to cover all construction permits the applicant selected on its FCC Form 175, but only enough to cover the maximum number of bidding units that are associated with construction permits on which they wish to place bids and hold provisionally winning bids in any given round. (Provisionally winning bids are bids that would become final winning bids if the auction were to close after the given round.) The total upfront payment does not affect the total dollar amount the bidder may bid on any given construction permit.

90. The Bureaus adopted an upfront payment and number of bidding units for each construction permit in Auction 93. Upfront payment amounts and bidding units are set forth in Attachment A of the [Auction 93 Procedures Public Notice](#).

91. In calculating its upfront payment amount, an applicant should determine the **maximum** number of bidding units on which it may wish to be active (bid on or hold provisionally winning bids on) in any single round, and submit an upfront payment amount covering that number of bidding units. In order to make this calculation, an applicant should add together the bidding units for all construction permits on which it seeks to be active in any given round. **Applicants should check their calculations carefully, as there is no provision for increasing a bidder's eligibility after the upfront payment deadline.**

92. 47 CFR 1.2106(a) requires that applicants that are former defaulters or delinquents must pay upfront payments 50 percent greater than non-former defaulters or non-former delinquents. For purposes of this calculation, the applicant includes the applicant itself, its affiliates, its controlling interests, and affiliates of its controlling interests, as defined by 47 CFR 1.2110. If an applicant is a

former defaulter or delinquent, it must calculate its upfront payment for all of its identified construction permits by multiplying the number of bidding units on which it wishes to be active by 1.5.

93. In order to calculate the number of bidding units to assign to former defaulters, the Commission will divide the upfront payment received by 1.5 and round the result up to the nearest bidding unit. If an applicant fails to submit a sufficient upfront payment to establish eligibility to bid on at least one of the construction permits selected on its FCC Form 175, the applicant will not be eligible to participate in the auction. This ineligible applicant will retain its status as an applicant in Auction 93 and will remain subject to 47 CFR 1.2105(c) and 73.5002(d).

E. Applicant's Wire Transfer Information for Purposes of Refunds of Upfront Payments

94. After the auction, applicants that are not winning bidders or are winning bidders whose upfront payment exceeded the total net amount of their winning bids may be entitled to a refund of some or all of their upfront payment. All refunds will be returned to the payer of record, as identified on the FCC Form 159, unless the payer submits written authorization instructing otherwise. Bidders that drop out of the auction completely (have exhausted all of their activity rule waivers and have no remaining bidding eligibility) may request a refund of their upfront payments before the close of the auction.

95. To ensure that refunds of upfront payments are processed in an expeditious manner, the Commission is requesting that all pertinent information be supplied. Applicants can provide the information electronically during the initial short-form application filing window after the form has been submitted. (Applicants are reminded that information submitted as part of an FCC Form 175 will be available to the public; for that reason, wire transfer information should **not** be included in an FCC Form 175.) Specific instructions were provided in the [Auction 93 Procedures Public Notice](#) for the submission of wire transfer instructions by fax.

F. Auction Registration

96. Approximately ten days before the auction, the Bureaus will issue a public notice announcing all qualified bidders for the auction. Qualified bidders are those applicants with submitted

FCC Form 175 applications that are deemed timely-filed, accurate, and complete, provided that such applicants have timely submitted an upfront payment that is sufficient to qualify them to bid.

97. All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by overnight mail. The mailing will be sent only to the contact person at the contact address listed in the FCC Form 175 and will include the SecurID® tokens that will be required to place bids, the Integrated Spectrum Auction System (ISAS) Bidder's Guide, and the Auction Bidder Line telephone number.

98. Qualified bidders that do not receive this registration mailing will not be able to submit bids. Therefore, if this mailing is not received by noon on Tuesday, March 20, 2012, such a qualified bidder must call the Auctions Hotline at (717) 338-2868. Receipt of this registration mailing is critical to participating in the auction, and each applicant is responsible for ensuring it has received all of the registration material.

99. In the event that SecurID® tokens are lost or damaged, only a person who has been designated as an authorized bidder, the contact person, or the certifying official on the applicant's short-form application may request replacements. To request replacement of these items, call Technical Support at (877) 480-3201, option nine; (202) 414-1250; or (202) 414-1255 (TTY).

G. Remote Electronic Bidding

100. The Commission will conduct this auction over the Internet, and telephonic bidding will be available as well. Only qualified bidders are permitted to bid. Each applicant should indicate its bidding preference – electronic or telephonic – on its FCC Form 175. In either case, each authorized bidder must have its own SecurID® token, which the Commission will provide at no charge. Each applicant with one authorized bidder will be issued two SecurID® tokens, while applicants with two or three authorized bidders will be issued three tokens. **For security purposes, the SecurID® tokens, the telephonic bidding telephone number, and the ISAS Bidder's Guide are only mailed to the contact person at the contact address listed on the FCC Form 175.** Each SecurID® token is tailored to a

specific auction. SecurID® tokens issued for other auctions or obtained from a source other than the FCC will not work for Auction 93.

H. Mock Auction – March 23, 2012

101. All qualified bidders will be eligible to participate in a mock auction on Friday, March 23, 2012. The mock auction will enable bidders to become familiar with the FCC Auction System prior to the auction. The Bureaus strongly recommend that all bidders participate in this mock auction. Details will be announced by public notice.

IV. AUCTION

102. The first round of bidding for Auction 93 will begin on Tuesday, March 27, 2012. The initial bidding schedule will be announced in a public notice listing the qualified bidders, which will be released approximately 10 days before the start of the auction.

A. Auction Structure

i. Simultaneous Multiple Round Auction

103. In Auction 93, all construction permits will be auctioned in a single auction using the Commission's standard simultaneous multiple-round auction format. This type of auction offers every construction permit for bid at the same time and consists of successive bidding rounds in which eligible bidders may place bids on individual construction permits. A bidder may bid on, and potentially win, any number of construction permits. Unless otherwise announced, bids will be accepted on all construction permits in each round of the auction until bidding stops on every construction permit.

ii. Eligibility and Activity Rules

104. The Bureaus will use upfront payments to determine initial (maximum) eligibility (as measured in bidding units) for Auction 93. The amount of the upfront payment submitted by a bidder determines its initial bidding eligibility, the maximum number of bidding units on which a bidder may be active. Each construction permit is assigned a specific number of bidding units as listed in Attachment A of the Auction 93 Procedures Public Notice. Bidding units assigned to each construction permit do not change as prices rise during the auction. Upfront payments are not attributed to specific construction

permits. Rather, a bidder may place bids on any of the construction permits selected on its FCC Form 175 as long as the total number of bidding units associated with those construction permits does not exceed its current eligibility.

105. In order to ensure that an auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until late in the auction before participating. Bidders are required to be active on a specific percentage of their current bidding eligibility during each round of the auction. Auction 93 will be a single-stage auction and 100 percent activity is required. In each round of the auction, a bidder desiring to maintain its current bidding eligibility is required to be active on 100 percent of its bidding eligibility. That is, a bidder must place a bid (or bids) and/or have a provisionally winning bid (or bids) during each round of the auction.

106. A bidder's activity level in a round is the sum of the bidding units associated with any construction permits covered by new and provisionally winning bids. A bidder is considered active on a construction permit in the current round if it is either the provisionally winning bidder at the end of the previous bidding round or if it submits a bid in the current round.

107. Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain, or a reduction in the bidder's eligibility, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction.

iii. Activity Rule Waivers

108. The Bureaus decided to provide bidders in Auction 93 with three activity rule waivers. Bidders may use an activity rule waiver in any round during the course of the auction. Use of an activity rule waiver preserves the bidder's eligibility despite its activity in the current round being below the required minimum activity level. An activity rule waiver applies to an entire round of bidding and not to a particular construction permit. Waivers can be either proactive or automatic and are principally a mechanism for auction participants to avoid the loss of bidding eligibility in the event that exigent circumstances prevent them from placing a bid in a particular round.

109. The FCC Auction System assumes that a bidder with insufficient activity would prefer to apply an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver at the end of any bidding round in which a bidder's activity level is below the minimum required unless (1) the bidder has no activity rule waivers remaining or (2) the bidder overrides the automatic application of a waiver by reducing eligibility. If no waivers remain and the activity requirement is not satisfied, the FCC Auction System will permanently reduce the bidder's eligibility, possibly curtailing or eliminating the ability to place additional bids in the auction.

110. A bidder with insufficient activity may wish to reduce its bidding eligibility rather than use an activity rule waiver. If so, the bidder must affirmatively override the automatic waiver mechanism during the bidding round by using the reduce eligibility function in the FCC Auction System. In this case, the bidder's eligibility is permanently reduced to bring it into compliance with the activity rule described above. Reducing eligibility is an irreversible action; once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility, even if the round has not yet closed.

111. Finally, a bidder may apply an activity rule waiver proactively as a means to keep the auction open without placing a bid. If a proactive waiver is applied (using the "apply waiver" function in the FCC Auction System) during a bidding round in which no bids are placed the auction will remain open and the bidder's eligibility will be preserved. However, an automatic waiver applied by the FCC Auction System in a round in which there are no new bids or proactive waivers will not keep the auction open. A bidder cannot submit a proactive waiver after bidding in a round, and applying a proactive waiver will preclude it from placing any bids in that round. **Applying a waiver is irreversible; once a bidder submits a proactive waiver, the bidder cannot unsubmit the waiver even if the round has not yet ended.**

iv. Auction Stopping Rules

112. For Auction 93, the Bureaus will employ a simultaneous stopping rule approach, which means all construction permits remain available for bidding until bidding stops simultaneously on every

construction permit. More specifically, bidding will close on all construction permits after the first round in which no bidder submits any new bids or applies a proactive waiver.

113. The Bureaus also adopted for Auction 93 alternative versions of the simultaneous stopping rule. Under Option 1, the auction would close for all construction permits after the first round in which no bidder applies an activity rule waiver or places any new bids on any construction permit on which it is not the provisionally winning bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a construction permit for which it is the provisionally winning bidder would not keep the auction open under this modified stopping rule.

114. Under Option 2, the auction would close for all construction permits after the first round in which no bidder applies a waiver or places any new bids on any construction permit that is not FCC held. Thus, absent any other bidding activity, a bidder placing a new bid on a construction permit that does not already have a provisionally winning bid (an FCC-held construction permit) would not keep the auction open under this modified stopping rule.

115. Under Option 3, the auction would close using a modified version of the simultaneous stopping rule that combines Options 1 and 2 above.

116. Under Option 4, the auction would end after a specified number of additional rounds. If the Bureaus invoke this special stopping rule, it will accept bids in the specified final round(s), after which the auction will close.

117. Under Option 5, the auction would remain open even if no bidder places any new bids or applies a waiver. In this event, the effect will be the same as if a bidder had applied a waiver. Thus, the activity rule will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use a waiver.

118. The Bureaus proposed to exercise these options only in certain circumstances, for example, where the auction is proceeding unusually slowly or quickly, there is minimal overall bidding activity, or it appears likely that the auction will not close within a reasonable period of time or will close prematurely. Before exercising these options, the Bureaus are likely to attempt to change the pace of the

auction. For example, the Bureaus may adjust the pace of bidding by changing the number of bidding rounds per day and/or the minimum acceptable bids. The Bureaus retain the discretion to exercise any of these options with or without prior announcement during the auction.

v. Auction Delay, Suspension, or Cancellation

119. By public notice or by announcement during the auction, the Bureaus may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding. Network interruption may cause the Bureaus to delay or suspend the auction. In such cases, the Bureaus, in their sole discretion, may elect to resume the auction starting from the beginning of the current round or from some previous round, or cancel the auction in its entirety. The Bureaus will exercise this authority solely at the discretion of the Bureaus, and not as a substitute for situations in which bidders may wish to apply their activity rule waivers.

B. Bidding Procedures

i. Round Structure

120. The initial schedule of bidding rounds will be announced in the public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction. Each bidding round is followed by the release of round results. Multiple bidding rounds may be conducted each day.

121. The Bureaus have the discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The Bureaus may change the amount of time for the bidding rounds, the amount of time between rounds, or the number of rounds per day, depending upon bidding activity and other factors.

ii. Reserve Price and Minimum Opening Bids

122. The Bureaus did not establish a reserve price for the construction permits to be offered in Auction 93. The Bureaus did establish minimum opening bids for each construction permit in this

auction. The specific minimum opening bid amounts for the construction permits available in Auction 93 were specified in Attachment A of the Auction 93 Procedures Public Notice.

123. In response to the Auction 93 Comment Public Notice, a commenter requested that the minimum opening bid for a construction permit at Grants Pass, Oregon, Channel 257A (MM-FM936-A) be reduced from \$35,000 to \$750. The Bureaus agreed that some reduction of the proposed minimum opening bid amount was warranted in this case, though the Bureaus did not believe that the reduction proposed by the commenter was justified. The Bureaus adopted a minimum opening bid (and corresponding upfront payment amount) for MM-FM936-A, at Grants Pass, Oregon, of \$15,000.

iii. Bid Amounts

124. In each round, an eligible bidder will be able to place a bid on a given construction permit in any of up to nine different amounts, if the bidder has sufficient eligibility to place a bid on the particular construction permit. The FCC Auction System interface will list the nine acceptable bid amounts for each construction permit. In the event of duplicate bid amounts due to rounding, the FCC Auction System will omit the duplicates and will list fewer acceptable bid amounts for the permit.

125. The first of the acceptable bid amounts is called the minimum acceptable bid amount. The minimum acceptable bid amount for a construction permit will be equal to its minimum opening bid amount until there is a provisionally winning bid for the construction permit. After there is a provisionally winning bid for a permit, the minimum acceptable bid amount will be a certain percentage higher. That is, the minimum acceptable bid amount will be calculated by multiplying the provisionally winning bid amount times one plus the minimum acceptable bid percentage. The Bureaus will begin the auction with a minimum acceptable bid percentage of 10 percent. Thus, the minimum acceptable bid amount will equal (provisionally winning bid amount) * (1.10), rounded.

126. The eight additional bid amounts are calculated using the minimum acceptable bid amount and a bid increment percentage, which will be 5 percent for the beginning of Auction 93. The first additional acceptable bid amount equals the minimum acceptable bid amount times one plus the bid increment percentage, rounded. For Auction 93, the calculation is (minimum acceptable bid amount) * (1

+ 0.05), rounded, or (minimum acceptable bid amount) * 1.05, rounded; the second additional acceptable bid amount equals the minimum acceptable bid amount times one plus two times the bid increment percentage, rounded, or (minimum acceptable bid amount) * 1.10, rounded; the third additional acceptable bid amount equals the minimum acceptable bid amount times one plus three times the bid increment percentage, rounded, or (minimum acceptable bid amount) * 1.15, rounded; etc. The Bureaus will round the results of these calculations using the standard rounding procedures for auctions.

127. The Bureaus retain the discretion to change the minimum acceptable bid amounts, the minimum acceptable bid percentage, the bid increment percentage, and the number of acceptable bid amounts if the Bureaus determine that circumstances so dictate. The Bureaus retain the discretion to do so on a construction permit-by-construction permit basis. The Bureaus retain the discretion to limit (a) the amount by which a minimum acceptable bid for a construction permit may increase compared with the corresponding provisionally winning bid, and (b) the amount by which an additional bid amount may increase compared with the immediately preceding acceptable bid amount. For example, the Bureaus could set a \$10,000 limit on increases in minimum acceptable bid amounts over provisionally winning bids. Thus, if calculating a minimum acceptable bid using the minimum acceptable bid percentage results in a minimum acceptable bid amount that is \$12,000 higher than the provisionally winning bid on a construction permit, the minimum acceptable bid amount would instead be capped at \$10,000 above the provisionally winning bid. If the Bureaus exercise this discretion, the Bureaus will alert bidders by an announcement in the FCC Auction System during the auction.

iv. Provisionally Winning Bids

128. At the end of each bidding round, a provisionally winning bid will be determined based on the highest bid amount received for each construction permit. A provisionally winning bid will remain the provisionally winning bid until there is a higher bid on the same construction permit at the close of a subsequent round. Provisionally winning bids at the end of the auction become the winning bids. Provisionally winning bids count toward activity for purposes of the activity rule.

129. The Bureaus will use a random number generator to select a single provisionally winning bid in the event of identical high bid amounts being submitted on a construction permit in a given round (i.e., tied bids). Specifically, the FCC Auction System will assign a random number to each bid upon submission. The tied bid with the highest random number wins the tiebreaker, and becomes the provisionally winning bid. Bidders, regardless of whether they hold a provisionally winning bid, can submit higher bids in subsequent rounds. However, if the auction were to end with no other bids being placed, the winning bidder would be the one that placed the provisionally winning bid.

v. Bidding

130. All bidding will take place remotely either through the FCC Auction System or by telephonic bidding. There will be no on-site bidding during Auction 93. Telephonic bid assistants are required to use a script when entering bids placed by telephone. Telephonic bidders must allow sufficient time to bid by placing their calls well in advance of the close of a round. The length of a call to place a telephonic bid may vary; please allow a minimum of ten minutes.

131. A bidder's ability to bid on specific construction permits is determined by two factors: (1) the construction permits selected on the bidder's FCC Form 175 and (2) the bidder's eligibility. The bid submission screens will allow bidders to submit bids on only those construction permits the bidder selected on its FCC Form 175.

132. In order to access the bidding function of the FCC Auction System, bidders must be logged in during the bidding round using the passcode generated by the SecurID[®] token and a personal identification number PIN created by the bidder. The Bureaus strongly encouraged bidders to print a round summary for each round after they have completed all of their activity for that round.

133. In each round, an eligible bidder will be able to place bids on a given construction permit in as many as nine pre-defined bid amounts, if the bidder has sufficient eligibility to place a bid on the particular construction permit. For each construction permit, the FCC Auction System will list the acceptable bid amounts in a drop-down box. Bidders use the drop-down box to select from among the

acceptable bid amounts. The FCC Auction System also includes an upload function that allows text files containing bid information to be uploaded.

134. Until a bid has been placed on a construction permit, the minimum acceptable bid amount for that permit will be equal to its minimum opening bid amount. Once there are bids on a permit, minimum acceptable bids for the following round will be determined.

135. During a round, an eligible bidder may submit bids for as many construction permits as it wishes (providing that it is eligible to bid on the specific permits), remove bids placed in the current bidding round, or permanently reduce eligibility. If multiple bids are submitted for the same construction permit in the same round, the system takes the last bid entered as that bidder's bid for the round. Bidding units associated with construction permits for which the bidder has removed bids do not count towards current activity.

vi. Bid Removal and Bid Withdrawal

136. In Auction 93, each bidder will have the option of removing any bids placed in a round provided that such bids are removed before the close of that bidding round. By using the remove bids function in the FCC Auction System, a bidder may effectively unsubmit any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments. Removing a bid will affect a bidder's activity for the round in which it is removed, i.e., a bid that is removed does not count toward bidding activity. Once a round closes, a bidder may no longer remove a bid.

137. The Bureaus will prohibit bidders in Auction 93 from withdrawing any bids after the round in which the bids were placed has ended. Bidders are cautioned to select bid amounts carefully because no bid withdrawals will be allowed, even if a bid was mistakenly or erroneously made.

vii. Round Results

138. Reports reflecting bidders' identities for Auction 93 will be available before and during the auction. Thus, bidders will know in advance of this auction the identities of the bidders against which they are bidding.

139. Bids placed during a round will not be made public until the conclusion of that round. After a round closes, the Bureaus will compile reports of all bids placed, current provisionally winning bids, new minimum acceptable bid amounts for the following round, whether the construction permit is FCC held, and bidder eligibility status (bidding eligibility and activity rule waivers), and post the reports for public access.

viii. Auction Announcements

140. The Commission will use auction announcements to report necessary information such as schedule changes. All auction announcements will be available by clicking a link in the FCC Auction System.

V. POST-AUCTION PROCEDURES

141. Shortly after bidding has ended, the Commission will issue a public notice declaring the auction closed, identifying the winning bidders, and establishing the deadlines for submitting down payments, final payments, and the long-form applications (FCC Forms 301).

A. Down Payments

142. Within ten business days after release of the auction closing public notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Commission for Auction 93 to twenty percent of the net amount of its winning bids (gross bids less any applicable new entrant bidding credits).

B. Final Payments

143. Each winning bidder will be required to submit the balance of the net amount of its winning bids within ten business days after the applicable deadline for submitting down payments.

C. Long-Form Application (FCC Form 301)

144. The Commission's rules currently provide that within thirty days following the close of bidding and notification to the winning bidders, unless a longer period is specified by public notice, winning bidders must electronically submit a properly completed long-form application (FCC Form 301, Application for Construction Permit for Commercial Broadcast Station), and required exhibits for each

construction permit won through Auction 93. Winning bidders claiming new entrant status must include an exhibit demonstrating their eligibility for the bidding credit. Further instructions on these and other filing requirements will be provided to winning bidders in the auction closing public notice.

D. Default and Disqualification

145. Any winning bidder that defaults or is disqualified after the close of the auction (i.e., fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) will be subject to the payments described in 47 CFR 1.2104(g)(2). This payment consists of a deficiency payment, equal to the difference between the amount of the Auction 93 bidder's winning bid and the amount of the winning bid the next time a construction permit covering the same spectrum is won in an auction, plus an additional payment equal to a percentage of the defaulter's bid or of the subsequent winning bid, whichever is less. The percentage of the applicable bid to be assessed as an additional payment for defaults in Auction 93 was established at twenty percent of the applicable bid.

146. If a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing authorizations held by the applicant.

FEDERAL COMMUNICATIONS COMMISSION.

Gary Michaels,
Deputy Chief, Auctions and Spectrum Access Division, WTB.